

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 09 2004

CLAUDETTE PRIDE, CHIEF R&ROG

OFFICE OF
MANAGING DIRECTOR

Paul H. Brown, Esq.
1827 Jefferson Place, N.W.
Washington, D.C. 20036

Re: Request for Waiver of FY 2003 Regulatory Fees
for KMRI Radio, LLC
Fee Control No. 00000RROG-04-011

Dear Mr. Brown:

This is in response to your request dated September 25, 2003, filed on behalf of KMRI Radio, LLC (KLR), licensee of radio broadcast station KMRI, West Valley City, Utah, for a waiver of the fiscal year (FY) 2003 regulatory fees on the grounds of financial hardship. Our records reflect that KMRI has not paid its FY 2003 regulatory fees.

In your request you explain that KLR purchased AM station KMRI in 1998, that KMRI is the sole asset of KRL, and that Pat Openshaw, the sole owner and manager of KRL, has no ownership interest in any other radio station. You assert that KMRI has never been profitable. You explain that as a small AM station, KMRI cannot compete for listeners with FM stations or with larger AM stations that have talk radio-type formats that do not require quality audio transmission not possible on AM signals. You explain further that no wages have been paid during the period for which you submit financial data, that the station is able to remain on the air by virtue of volunteers, and that Mrs. Openshaw has personally covered the losses of the station and purchased new equipment as needed. You state that Mrs. Openshaw's goal is not to earn a profit but rather to provide what she believes is an important public service to the community. Finally, you request that we consider depreciation as an expense because it represents the declining value of the station's equipment that will need replacement at some point, and focusing on cash flow absent consideration of depreciation expense, will render the station unable to replace obsolete equipment and jeopardize continued service to the community. You submit a statement of revenues and expenditures for the eleven months ending in August, 2003 that demonstrates a negative cash flow when including depreciation, but a very small positive cash flow when depreciation is deducted.

In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. Thus, the Commission decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). The Commission further held that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-2762.

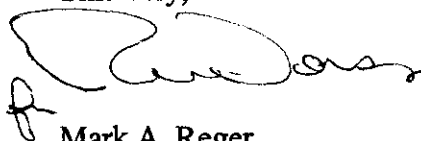
In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

It appears from the documentation submitted that KMRI's small profit, with depreciation expenses deducted, is significantly less than the \$2,925.00 it owes for its FY 2003 regulatory fee. Further, you have established that no payments were made to any principal or officer of the corporation. We find this showing constitutes a compelling case of financial hardship. Therefore, your request for a waiver of the regulatory fee for FY 2003 is granted. This waiver, however, is limited to the FY 2003 regulatory fee. If KMRI continues to experience financial hardship, you may request waivers of the fees for succeeding years accompanied by appropriate supporting documentation.

You also have requested confidential treatment of the material that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", is written over a horizontal line.

Mark A. Reger
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 09 2004

OFFICE OF
MANAGING DIRECTOR

Jeffrey L. Timmons, P.C.
3235 Satellite Blvd.
Building 400, Suite 300
Duluth, Georgia 30096-8688

Re: Station KCFG(TV), Flagstaff, AZ
KM Television of Flagstaff, L.L.C.
Request for Waiver of FY 2002 Regulatory Fee
Fee Control No. 0209268835592006

Dear Mr. Timmons:

This is in response to your request dated September 24, 2002, filed on behalf of KM Television of Flagstaff, L.L.C. (KM Television), for a waiver or reduction of the \$34,700.00 fiscal year (FY) 2002 regulatory fee for Station KCFG(TV), Flagstaff, Arizona, based upon financial hardship.¹ Our records reflect that KM Television has paid \$3,525.00 of the \$34,700.00 FY 2002 regulatory fee at issue here.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

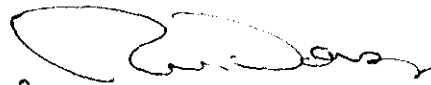
You submit a copy of KM Television's unaudited "Profit and Loss" statement for the 2001 calendar year. You recite that this statement "is the most recent full year for which financial statements are available for KM[Television.]" In subsequent correspondence, you state that no payments were made to owners or principals of KM Television during 2001. KM Television's "Profit and Loss" statement indicates that KM Television suffered a financial loss of \$124,011.22 in the 2001 calendar year, which was only partially offset by depreciation. Our review of KM Television's financial loss is based

¹ You raise additional arguments in support of your waiver request which we do not address given our finding that payment of the regulatory fee would cause KM Television undue financial hardship.

upon KM Television's "Profit and Loss" statement, which reflects interest income of \$22.71 (and no other income), and your statements that the station generated "almost no revenues" in 2001 because it was a new station, with minimal programming, a weak signal, and "[un]able to realistically market or promote the station or begin to sell advertising[.]" Given that KM Television suffered a financial loss in the 2001 calendar year, we grant your request for a full waiver of the \$34,700.00 regulatory fee for FY 2002. Accordingly, we also grant KM Television a refund of the \$3,525.00 that KM Television paid in connection with the FY 2002 regulatory fee.

A check made payable to the maker of the original check and drawn in the amount of \$3,525.00, will be sent to you at the earliest practicable time. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", with a stylized flourish at the end.

Mark A. Reger
Chief Financial Officer

0209268835592006

FILE**JEFFREY L. TIMMONS, P.C.**

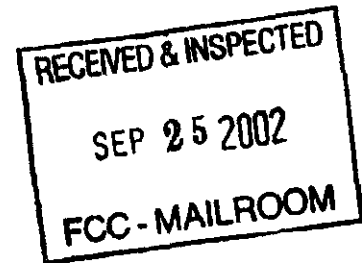
3235 Satellite Boulevard, Building 400, Suite 300

Duluth, Georgia 30096-8688

Telephone: 770-291-2170

Facsimile: 770-291-2171

E-mail: jeff@timmonspc.com



September 24, 2002

VIA FEDERAL EXPRESS

Office of the Managing Director

Federal Communications Commission

445 12th Street, S.W., Room 1-A625

Washington, D.C. 20554

Attn: Regulatory Fee Waiver/Reduction Request

RE: KM Television of Flagstaff, L.L.C.
Television Station KCFG(TV), Flagstaff, Arizona

Dear FCC:

KM Television of Flagstaff, L.L.C. ("KM"), licensee of full power commercial television station KCFG(TV), Flagstaff, Arizona (Facility ID No. 35104, "KCFG"), by its counsel, and pursuant to the Commission's Public Notice, FY 2002 Media Services Regulatory Fees (released August 7, 2002, the "Public Notice"), respectfully requests the waiver or, in the alternative, a reduction in the annual regulatory fee to be paid by KM for KCFG for fiscal year 2002.

The Public Notice states that the Commission will consider the waiver or reduction of annual regulatory fees in extraordinary and compelling circumstances, upon a showing that such a waiver or reduction would serve the public interest. See Public Notice at 7. For the reasons stated herein, KM also respectfully requests that the Commission defer payment of the regulatory fee until the Commission acts upon this request for waiver; however, KM is timely paying (i.e., by September 25, 2002) the reduced regulatory fee proposed herein.

KM completed construction and first put KCFG on the air as a new full power commercial television station in December 2000, and filed a license to cover application on December 20, 2000 (File No. BLCT-20001220ACM), which was granted on July 18, 2001. As a result, KCFG first became a licensed station (and therefore subject to the much higher annual regulatory fee for licensed stations as compared to construction permits) less than 3 months prior to the October 1, 2001 cut-off date for the status of the station that determines the appropriate regulatory fee. Specifically, since KCFG and Flagstaff are assigned to the Phoenix, Arizona Designated Market Area ("DMA"), which ranked as DMA No. 17, see 2001 *Television & Cable Factbook* at A-62 ("2001 Factbook"), the regulatory fee for KCFG would be \$34,700. See Public Notice at 10 (\$34,700 regulatory fee for commercial VHF stations in DMA markets 11-25).

Assessing KCFG with the \$34,700 annual regulatory fee due for a DMA 11-25 station does not reflect the realities of KCFG's service area, market and economic situation, and therefore the regulatory fees should be reduced for fiscal year 2002, if not waived completely. KCFG currently is licensed and operates with only 1 kilowatt effective radiated power ("ERP") due to a power restriction at its antenna site, and as a result KCFG was predicted to serve a population of only 74,677 persons (1990 U.S. Census) within its predicted Grade B contour,¹ which is only a small fraction (about 2%) as compared to the 1,441,660 households in the Phoenix DMA. See 2001 Factbook at A-62. Flagstaff itself has a current (2000 U.S. Census) population of only 52,894 persons, as compared to the 1,321,045 person population of Phoenix (the principal community in the Phoenix DMA, and where the vast majority of the population in the DMA resides).

Since Flagstaff is more than 130 miles from Phoenix, with mountain terrain between the two communities, KCFG can not expect to serve Phoenix with an off-the-air signal. Nor would KM likely be successful in reaching Phoenix-area viewers by gaining mandatory carriage (or "must carry") of KCFG on Phoenix-area cable television systems; the Commission has typically found in favor of Phoenix cable television systems seeking to delete Flagstaff stations from their mandatory carriage obligations under market modification requests.² Accordingly, since KCFG does not serve, and indeed is unable to serve or expect to serve, Phoenix or much of the Phoenix DMA, the annual regulatory fee for KCFG should be reduced, if not waived. Specifically, KM proposes that the annual regulatory fee be reduced to the \$3,525 due from commercial VHF stations in "Remaining Markets" (i.e., DMA markets ranked below the top 100 DMAs), see Public Notice at 10, which more accurately reflects the current and potential service area, or "market", of KCFG.

Assessing KCFG the \$34,700 fee due from Phoenix DMA No. 17 stations would ignore the facts and market realities faced by KM and KCFG, and would harm the service that may be offered by KCFG, and would also impose a financial hardship on KM; therefore, not only should the regulatory fee for KCFG be reduced to \$3,525 (or waived), KM should also be granted a deferment from paying the full \$34,700 that otherwise would be due from a commercial VHF station in DMA 11-25 pending the outcome of its reduction or waiver request. See Public Notice at 7.

¹ See File No. BPCT-19950317KN at Section V-C - TV Broadcast Engineering Data, Question 17 (as amended February 2, 1996, the current Form 310 engineering for the station's licensed parameters).

² See, e.g., CoxCom, Inc., File No. CSR-5887-A, Memorandum Opinion and Order, DA 02-2295 (released September 18, 2002). In CoxCom, the Commission granted a cable television operator's request to delete Phoenix and 28 other Phoenix-area communities from the definition of the "market" within which full power television station KFPH(TV), Flagstaff, Arizona is entitled to must carry rights. Id. The Commission relied primarily on the distance between Flagstaff and Phoenix, as well as KFPH(TV)'s lack of Grade B or better signal coverage over Phoenix and the other communities, as the basis for finding that KFPH(TV) did not serve Phoenix for purposes of the definition of its local market for must carry purposes. Id. KM notes that KFPH(TV) is licensed to operate on Channel 13 with the maximum 316 kilowatts ERP, see 2001 Factbook at A-63, and therefore would have a much greater service area even then KCFG(TV).

Attached hereto as Exhibit A are an unaudited Profit & Loss ("P&L") statement for KM for calendar year 2001 (which is also KM's fiscal year, and is the most recent full year for which financial statements are available for KM) and a Balance Sheet as of December 31, 2001 for KM, certified as accurate by an officer of KM. The P&L reflects that KM suffered a loss of over \$124,000 on KCFG in 2001, with almost no revenues generated by the station. The poor financial condition of KM and KCFG reflects that the station is a new station that had just commenced broadcasting in December 2000; through 2001 was able to broadcast only minimal programming, until KM was able to secure an affiliation with and commence broadcasting the America One Network programming in January 2002; and due to the currently weak signal of KCFG (1 kilowatt ERP, due to the transmitter site limitation), the station was not able to realistically market or promote the station or begin to sell advertising (particularly prior to gaining the America One Network affiliation in January 2002..

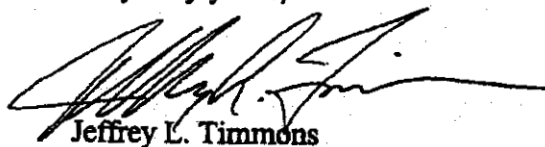
KM's financial hardship with KCFG has been further exacerbated by KM's expenditure of over \$100,000 (see File No. BEPCDT-20020430ABI) in the spring of 2002 to construct and implement digital television ("DTV") facilities for KCFG (under special temporary authority, see File No. BDSTA-20020422ABC) for the May 1, 2002 deadline for commercial stations to have their DTV signals on the air. KM also has had an application pending for well over a year to greatly improve the signal of KCFG, by changing to a better antenna site and increasing the ERP of the station to the maximum 316 kilowatts ERP permitted (see File No. BPCT-20010706AAQ); KM expects to expend considerable funds in 2002 implementing this facilities and service improvement, once the Commission acts on the modification application, and indeed KM has been paying \$2,000 per month rent for over 2 years now (since September 1, 2000) to secure the use of its modification site, in anticipation of prompt action by the Commission on its pending modification application. In the interim, KM is also pursuing its must carry rights with area cable television systems, which with the current KCFG facilities will require KM to deliver the KCFG signal to the cable television system headends by alternate means (such as microwave), another added expense.

In short, KM's current financial hardship in operating KCFG, as well as the implementation of its planned service improvements for both its analog and DTV facilities, would make it unduly burdensome for KM to pay the \$34,700 regulatory fee that would be due from a Phoenix DMA station, in addition to the inequities that arise from KCFG and Flagstaff -- which essentially are a small market station in a small market -- happening to fall in the Phoenix DMA, DMA No. 17. Even payment of the \$34,700 and awaiting a refund later would impose a severe financial hardship on KCFG, plus would reduce service to the community by severely hampering KM's ability to implement the planned analog and DTV service area and cable carriage improvements.

Accordingly, for the reasons stated herein, KM respectfully requests that the Commission reduce the annual regulatory fee due from KM for KCFG for fiscal year 2002 from \$34,700 to \$3,525 (or waive the fee entirely). KM also requests that the Commission defer the deadline by which KM must pay such annual regulatory fee, based on the financial hardship and reduction of service factors demonstrated herein; however, KM is timely paying its proposed reduced fee of \$3,525 by the September 25, 2002 payment deadline.

Please date-stamp the enclosed additional "FILE" copy of this filing and return it the undersigned in the enclosed self-addressed stamped envelope. Any questions regarding this filing and the requests made herein may be directed to the undersigned counsel for KM.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeffrey L. Timmons', is written over a horizontal line.

Jeffrey L. Timmons

Attachment

cc: Mrs. Myoung Hwa Bae

Exhibit ADECLARATION OF KEVIN JOEL BAE

I, Kevin Joel Bae, under penalty of perjury and pursuant to Section 1.16 of the Federal Communications Commission's rules, 47 C.F.R. § 1.16, do hereby declare that:

1. I am Vice President and Secretary of KM Television of Flagstaff, L.L.C. ("KM"), licensee of full power commercial television broadcast station KCFG(TV), analog Channel 9, Flagstaff, Arizona ("KCFG").

2. I have reviewed the request for reduction or waiver of the annual regulatory fees for fiscal year 2002 for KCFG to which this declaration is attached, and the facts set forth therein are true and correct to the best of my knowledge and belief.

3. I certify that the unaudited Profit & Loss statement for calendar (and fiscal) year 2001 and Balance Sheet as of December 31, 2001 for KM are true and correct in all material respects, and were prepared in accordance with generally accepted accounting principles, to the best of my knowledge and belief.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed this 23rd day of September, 2002.



Kevin Joel Bae, Vice President and Secretary
KM Television of Flagstaff, L.L.C.